

Message Text

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FM AMEMBASSY BERN

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FOR EUR/ CE SUTTERLIN; EUR/ P SAVAGE; H MACKENZIE; L MCDOWELL;

PASS JUSTICE PETERSEN; TREASURY MORGAN; SEC POLLACK

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TAGS: EFIN, PFOR, US, SZ

SUBJ: JUDICIAL ASSISTANCE TREATY: PRESS BRIEFING PAPER

REF: BERN 2084

FOLLOWING IS PRESS BRIEFING PAPER ON COMPLETION OF US- SWISS
JUDICIAL ASSISTANCE TREATY, PREPARED BY JA TEAM FOR USE, AS
APPROPRIATE, BUT STATE AND OTHER INTERESTED AGENCIES:

A. POSSIBLE QUESTIONS REGARDING US- SWISS JUDICIAL ASSISTANCE
TREATY.

B. ADVISORY: THE US AND SWITZERLAND SIGNED AT BERN MAY 25, 1973
A TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS. THE TREATY WAS
NEGOTIATED OVER A PERIOD OF FOUR YEARS BY REPRESENTATIVES OF
STATE, JUSTICE, TREASURY AND THE SECURITIES AND EXCHANGE COMMIS-
SION. THE OBJECTIVE WAS TO AGREE ON PROCEDURES FOR JUDICIAL
ASSISTANCE UNDER THE TWO DIVERGENT LEGAL SYSTEMS IN THE AREA OF
EVIDENCE GATHERING AND ADMISSIBILITY IN JUDICIAL PROCEEDINGS.

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C. THE FOLLOWING IS TO BE USED ON IF ASKED BASIS:

Q . WHAT DOES THE TREATY CONSIST OF?

SR. THE TREATY CONTAINS 41 ARTICLES, GROUP IN 9 CHAPTERS, AND A SCHEDULE LISTING 35 CATEGORIES OF OFFENSES TO WHICH THE TREATY IS APPLICABLE. IN ADDITION, THE TREATY IS SUPPLEMENTED BY 6 EXCHANGES OF INTERPRETIVE LETTERS.

Q . WHAT ARE THE IMPORTANT ELEMENTS OF THE TREATY?

SR. THE TREATY PROVIDES ASSISTANCE IN CONNECTION WITH COMMON CRIMES AND, TO AN EVEN GREATER EXTENT, IN REGARD TO THE PROBLEMS PRESENTED BY ORGANIZED CRIME. IT WAS AGREED THAT ORGANIZED CRIME WITH ITS WIDESPREAD DANGERS TO SOCIETY AND THE INTERNATIONAL SCOPE OF ITS OPERATIONS JUSTIFIES THE NEEDS FOR SPECIAL LEGAL ASSISTANCE.

Q. WILL THE SWISS PROVIDE ASSISTANCE IN INCOME TAX CASES?

SR. TAX MATTERS ARE ALREADY COVERED BY THE EXISTING CONVENTION BETWEEN THE UNITED STATES AND SWITZERLAND ON THE AVOIDANCE OF DOUBLE TAXATION WHICH AMONG OTHER THINGS DEALS WITH AGGRAVATED TAX FRAUD.

Q. DOES THE TREATY DEAL WITH AND OVERCOME SWISS BANK SECRECY?

SR. BANK SECRECY IS A COMPLICATED SUBJECT INVOLVING SPECIAL PROVISIONS OF SWISS LAW AND PRACTICE. CAREFUL ATTENTION THEREFORE WAS PAID TO HOW SWISS BANK INFORMATION COULD BE MADE AVAILABLE TO THE UNITED STATES IN CONNECTION WITH SERIOUS CRIMES IN THE UNITED STATES. THE TREATY PROVIDES MUTUALLY ACCEPTABLE PROCEDURES WHEREBY BANKING SECRECY COULD BE SET ASIDE, IN SPECIFIED CIRCUMSTANCES.

Q. HOW DOES THE TREATY APPLY TO VIOLATIONS OF US SECURITIES LAWS?

SR. IT DOES NOT PROVIDE FOR ASSISTANCE AS TO VIOLATIONS OF LAWS CONCERNING SECURITIES AS SUCH, SINCE SWITZERLAND DOES NOT HAVE SUCH LAWS. HOWEVER, ASSISTANCE CAN BE OBTAINED IN CONNECTION WITH A NUMBER OF BASICALLY SIMILAR COMMON CRIMES, SUCH AS LIMITED OFFICIAL USE

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FRAUD, INDUCING SPECULATION AND FALSE BUSINESS DECLARATIONS.

Q. WHAT IS SO SPECIAL ABOUT CONCLUDING THIS TREATY WITH SWITZERLAND?

SR. THIS IS A PIONEERING EFFORT SINCE THE US- SWISS JUDICIAL ASSISTANCE TREATY REPRESENTS THE FIRST SUCH MAJOR AGREEMENT FOR

THE UNITED STATES, AND FOR SWITZERLAND IT REPRESENTS THE FIRST AGREEMENT OF THIS TYPE WITH A COUNTRY HAVING AN ANGLO- SAXON SYSTEM OF LAW.

Q. WILL THE TREATY BE SUBMITTED TO THE SENATE FOR ITS ADVICE AND CONSENT?

SR. THE SENATE FOREIGN RELATIONS COMMITTEE HAS BEEN INFORMED OF THE ADMINISTRATION' S EFFORTS TO CONCLUDE A JUDICIAL ASSISTANCE TREATY WITH SWITZERLAND AND, AT THE APPROPRIATE TIME, THE TEXT OF THE TREATY WILL BE FORMALLY PRESENTED TO THE SENATE FOR ITS CONSIDERATION.

Q. WHEN CAN RATIFICATION OF THE TREATY BE ANTICIPATED?

SR. BOTH GOVERNMENTS HAVE INDICATED THEIR INTENT TO RATIFY THE TREATY AS SOON AS POSSIBLE, IN ACCORD WITH THEIR RESPECTIVE GENERAL TREATY RATIFICATION PROCEDURES.

Q. WILL SIMILAR TREATIES BE NEGOTIATED WITH OTHER COUNTRIES?

SR. THE MATTER HAS BEEN UNDER STUDY FOR SOME TIME AND NOW, WITH COMPLETION OF THE US- SWISS TREATY, NEGOTIATIONS WITH OTHER COUNT- RIES ON MUTUAL JUDICIAL ASSISTANCE MAY BE ANTICIPATED.
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